

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Claudia Quigley	Team: Team # 7	CCRB Case #: 200813882	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/23/2008 5:30 PM	Location of Incident: Harrod Avenue and Westchester Avenue	Precinct: 43	18 Mo. SOL 3/23/2010	EO SOL 3/23/2010	
Date/Time CV Reported Wed, 09/24/2008 10:58 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/24/2008 10:58 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Miguel Iglesias	15012	941926	043 PCT
2. POM Erik Sherar	28633	942538	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Ralph Tavella	01760	924541	043 PCT
2. SGT Marco Trujillo	02500	910954	INT OAS

Officer(s)	Allegation	Investigator Recommendation
A.POM Miguel Iglesias	Abuse: PO Miguel Iglesias questioned § 87(2)(b)	
B.POM Miguel Iglesias	Abuse: PO Miguel Iglesias frisked § 87(2)(b)	
C.POM Erik Sherar	Abuse: PO Erik Sherar frisked § 87(2)(b)	
D.POM Miguel Iglesias	Abuse: PO Miguel Iglesias searched § 87(2)(b)	
E.POM Erik Sherar	Abuse: PO Erik Sherar searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

## Synopsis

§ 87(2)(b) called the CCRB on September 24, 2008 to file a complaint. According to § 87(2)(b) on September 23, 2008, at approximately 5:30pm, he was stopped by PO Miguel Iglesias at Harrod Avenue and Westchester Avenue in the Bronx. § 87(2)(b) alleged that PO Iglesias exited a police van and approached him for no reason. PO Iglesias asked § 87(2)(b) about weapons, drugs, and his address (Allegation A). PO Erik Sherar also exited the van and both officers frisked § 87(2)(b) and searched his pants pockets (allegations B, C, D, and E). The officers did not find anything and walked away from § 87(2)(b). Neither PO Iglesias nor PO Sherar noted their actions in their memo books (Allegations F and G).

§ 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB October 6, 2008 (Encl. 6B).

According to § 87(2)(b) on September 23, 2008, at approximately 5:30pm, he exited a grocery store located at Harrod Avenue and Westchester Avenue in the Bronx. § 87(2)(b) was walking on Harrod Avenue when he observed a marked police van driving in the opposite direction with six or seven uniformed officers. § 87(2)(b) stated that he did not talk to anybody on his way to or from the store and did not conduct any illegal transactions. § 87(2)(b) made eye contact with an officer sitting in the passenger seat. The officer had a mean look on his face and was staring at § 87(2)(b). A few seconds later, the van reversed and stopped along side § 87(2)(b).

The passenger officer, identified by § 87(2)(b) from his nameplate as PO Miguel Iglesias, greeted § 87(2)(b) with a "How are you doing?" § 87(2)(b) responded, "How are you doing officer?" PO Iglesias was white, about 6'1" tall, and average build. PO Iglesias asked § 87(2)(b) "Can I talk to you?" and got out of the van. He told § 87(2)(b) "You know, you look pretty nervous to me," and asked him if he lived around the area and what he was doing there. § 87(2)(b) told him he was visiting a friend. PO Iglesias told § 87(2)(b) that he stopped him because § 87(2)(b) looked pretty nervous and his eyes were darting around. § 87(2)(b) responded that he was not nervous and was just walking down the street. PO Iglesias asked § 87(2)(b) if he had any drugs on him or used any drugs and § 87(2)(b) told him he did not. PO Iglesias asked him if he was sure and § 87(2)(b) responded he was.

At this time, a second officer, identified by the investigation as PO Erik Sherar, exited the van and approached § 87(2)(b). PO Sherar was a white male, about 5'10" tall, he had light brown hair, cut crew style, he was about 200lbs, and muscular. PO Sherar had been sitting directly behind PO Iglesias. Both officers proceeded to pat § 87(2)(b) while asking him questions, such as if he used drugs or if he had any weapons on him. PO Iglesias and PO Sherar patted § 87(2)(b)'s chest, down his legs, and around his pant pockets. PO Iglesias tucked his hand inside § 87(2)(b)'s right pocket, where § 87(2)(b) had his cell phone. He asked § 87(2)(b) what it was and § 87(2)(b) told him he was touching his cell phone. PO Iglesias asked § 87(2)(b) for his ID and § 87(2)(b) pulled out his wallet from his left pocket and gave it to PO Iglesias. PO Iglesias opened the wallet, looked at the ID through the clear plastic, and gave the wallet back to § 87(2)(b). § 87(2)(b) placed the

wallet back in his left pocket and PO Sherar tucked his hand inside the left pocket, but found nothing. At this time, the officers walked away from him. § 87(2)(b) waited to see if the officers were going to interact with him further, but the officers did not approach him again. § 87(2)(b) kept walking and the officers did not say anything. § 87(2)(b) did not get the names of the other officers, other than PO Iglesias, and could not describe the officers that remained in the van.

§ 87(2)(b) refused mediation.

**Photo Identification Procedure with § 87(2)(b) at the CCRB on May 14, 2009 (Encl. 7A-L).**

§ 87(2)(b) was shown photos of the 43<sup>rd</sup> Precinct Conditions Team: PO Miguel Iglesias, PO Thomas Trainor, PO Juan Acosta, PO Martin Pastor, and PO Erik Sherar. He was shown photos of two supervisors, Sgt. Ralph Tavella and Sgt. Marco Trujillo, and two fillers. § 87(2)(b) did not recognize Sgt. Ralph Tavella, PO Thomas Trainor, PO Juan Acosta, or PO Martin Pastor. § 87(2)(b) selected PO Iglesias' photo and identified him as the officer that first approached him. § 87(2)(b) then indicated that one of the fillers may have been one of the officers sitting in the van. § 87(2)(b) indicated that Sgt. Trujillo may have been the driver. He recognized him because of Sgt. Trujillo's bald head and was 80% sure. § 87(2)(b) also selected PO Sherar's photo. He stated that PO Sherar was the second officer that frisked and searched him along with PO Iglesias. § 87(2)(b) indicated that this officer was muscular.

**Results of Investigation**

**Officer Identification**

§ 87(2)(b) identified PO Iglesias by name. PO Iglesias identified PO Sherar as his partner. PO Sherar identified Sgt. Tavella as his supervisor. Sgt. Tavella identified Sgt. Trujillo as PO Iglesias and PO Sherar's supervisor. On September 23, 2008 PO Iglesias and PO Sherar worked 1500 x 2335 hours. They were assigned to the conditions team. Sgt. Tavella was listed as the conditions team supervisor. The officers were in uniform and assigned to a marked van, #5747. Sgt. Trujillo was not listed in the roll call. PO Sherar and PO Iglesias did not recall what other officers were present or who the driver of the van was.

**Officers' Statements**

**PO Miguel Iglesias' Stop and Frisk Report, September 23, 2008 (encl. 9A-B)**

PO Iglesias stopped § 87(2)(b) at the intersection of Westchester Avenue and Harrod Avenue in the Bronx on September 23, 2008 at 5:15pm. He suspected § 87(2)(b) of criminal possession of a controlled substance. He observed § 87(2)(b) for one minute and the stop lasted two minutes. The circumstances leading to the stop were actions indicative of engaging in a drug transaction, furtive movements, and a suspicious bulge/object, whose description was noted as unknown in the report. Additional factors were the high incidence of reported offenses in the area, time of day/week corresponding to criminal activity, proximity to scene of suspected offense, changing directions at the sight of officers, and an ongoing investigation. The frisk was conducted on the basis that there was a refusal to comply with the officer's directions and furtive movements.

**PO Miguel Iglesias was interviewed at the CCRB on January 8, 2009 (encl. 10B).**

PO Iglesias did not have any entries in his memo book regarding the incident.

PO Iglesias stated that the Intelligence Division at his command debriefs prisoners to gain information on drug-prone locations and weapons on the street. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) PO Iglesias did not remember any other description for the alleged seller other than he was a black male and did not dress very well. Harrod Avenue is close to a high drug prone location. There were also some complaints about drug transactions taking place in the area from members of the community.

According to PO Iglesias, on September 23, 2008, at approximately 5:30pm, he and his partners were parked about a block and half away from the corner of Harrod Avenue and Westchester Avenue. The officers were on the look out for the unidentified seller when PO Iglesias observed a male, later identified as § 87(2)(b) standing near the corner of Harrod Avenue and Westchester Avenue walking back and forth. A few minutes later a gentleman on a bike came up to § 87(2)(b) somewhere from the direction of Westchester Avenue. The civilians engaged in a

brief conversation and it looked to PO Iglesias as if they exchanged something. He did not see whether they touched hands or not but it appeared so. The officers were looking at the seller's back and part of § 87(2)(b)'s front. At this time the officers drove up, but before they could get to the location, the civilians separated and the gentleman on the bike began to drive away.

PO Iglesias and PO Sherar exited the van. PO Iglesias moved towards § 87(2)(b) and PO Sherar went after the gentleman on the bike, who was already a few feet away. PO Iglesias asked § 87(2)(b) if he knew the gentleman on the bike. § 87(2)(b) stated that he did not and denied talking to the gentleman at all. PO Iglesias overheard the alleged seller also telling PO Sherar that he did not know § 87(2)(b) and was not talking to him. PO Iglesias's level of suspicion rose because he observed them interacting a few moments before. § 87(2)(b) seemed nervous and when asked where he lived, § 87(2)(b) responded that he lived in the area. PO Iglesias asked § 87(2)(b) if he had any narcotics or weapons on him or anything the officers should know about. § 87(2)(b) responded that he did not and told PO Iglesias, "You can check if you like."

PO Iglesias stated that he did not recall a frisk, but according to the stop and frisk report he conducted a frisk. Nothing was recovered from the frisk and PO Iglesias released § 87(2)(b). The interaction lasted about three minutes. PO Iglesias did not recall placing his hands inside § 87(2)(b)'s pocket and would have noted the procedure in the stop and frisk report. PO Iglesias did not recall when PO Sherar returned to his side or what occurred with the alleged seller and he did not recall if PO Sherar or any other officers frisked and searched § 87(2)(b).

**PO Erik Sherar was interviewed at the CCRB on February 18, 2009 (encl. 12B).**

PO Sherar did not have any entries in his memo book regarding this incident.

PO Sherar stated that on September 23, 2008 he and PO Iglesias were conducting investigations in the vicinity of Harrod Avenue and Westchester Avenue in the Bronx. This area, located between east 172<sup>nd</sup> Street and Watson Avenue, is known as an "Impact Zone" because of narcotics trafficking. The officers were looking out for any illegal activities but they were also on the look out for a male on a bike. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) At approximately 5:30pm, PO Sherar and PO Iglesias observed a male, later identified as § 87(2)(b) being approached by a male on a bike. They were about a block from the officers. The civilians had a brief conversation and were relatively close to each other. PO Sherar stated that at this point it appeared to be a narcotics transaction and the officers decided to approach the individuals.

The officers drove the van closer and pulled over. By the time the officers exited the van, § 87(2)(b) and the male had separated. PO Iglesias approached § 87(2)(b) and PO Sherar approached the male on the bike. PO Sherar asked the male on the bike if he knew § 87(2)(b) and the male responded that he did not. PO Sherar then told him, "Weren't you just talking to him?" and the male responded that he was not. These answers raised PO Sherar's level of suspicion because he just saw the civilians interacting. However, since, from his angle of vision, PO Sherar did not actually see the male on the bike do anything, PO Sherar allowed him to leave when the male stated, "I live right here," and walked off down the sidewalk. PO Sherar did not ask for the male's name. PO Sherar did not recall if he went back to stand by PO Iglesias and did not recall interacting with § 87(2)(b). PO Sherar stated that PO Iglesias told him that § 87(2)(b) denied interacting with the male on the bike. PO Sherar did not recall if PO Iglesias frisked § 87(2)(b) or searched him and he did not frisk him or search § 87(2)(b) himself. PO Sherar stated that the whole interaction lasted under a minute.

**Sgt. Ralph Tavella was interviewed at the CCRB on March 31, 2009 (encl. 14B).**

On September 23, 2008 Sgt. Tavella worked 1450 x 2347 hours. He was assigned as the conditions sergeant. Sgt. Tavella reviewed the roll call and stated that on the date of the incident he worked with PO Martin Pastor, PO Juan Acosta, and PO Thomas Trainor. Although PO Miguel Iglesias and PO Erik Sherar were assigned to the conditions team, Sgt. Tavella did not work with them. Sgt. Tavella was in uniform and assigned to an unmarked van. Sgt. Tavella did not have anything in his memo book regarding the incident. According to Sgt. Tavella, he did not recall this incident and did not interact with a male named § 87(2)(b) on September 23, 2008 at Harrod Avenue and Westchester Avenue in the Bronx. Sgt. Tavella was given a brief description of the incident but he stated that he did not know anything § 87(2)(e), § 87(2)(f)

**Sgt. Marco Trujillo was interviewed at the CCRB on April 22, 2009 (encl. 15B).**

Sgt. Trujillo stated that he was transferred to 52<sup>nd</sup> Precinct two days before the incident in question, on September 21, 2008, and he was not involved in any way with this incident nor did he knew about it. According to the Monitor and Analysis Section, Sgt. Trujillo has been assigned to the Criminal Intelligence Section since February 5, 2007.

**NYPD Documents**

- Roll Call (encl. 16A-B) – According to the 43<sup>rd</sup> Precinct roll call, PO Iglesias and PO Sherar were assigned to the conditions team on September 23, 2008 and were working tour 3. Sgt. Tavella was assigned as the condition's supervisor. Sgt. Trujillo was not listed on the roll call.
- Command Log. (encl. 17A-G) – There are no entries in the command log regarding this incident.
- SPRINT (encl. 20C) – There were no calls regarding this incident.

**Complainant/Victim Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

**Civilian CCRB History (encl. 3A)**

§ 87(2)(b) has filed eight complaints at the CCRB, aside from this complaint. § 87(2)(b)

**Police Officer CCRB History (encl. 1A, 2A)**

PO Iglesias and PO Sherar do not have any substantiated CCRB allegations.

**Conclusions and Recommendations**

**Identification of Subject Officers**

PO Iglesias was identified by § 87(2)(b) as the officer that stopped him and PO Iglesias confirmed his interaction with § 87(2)(b). PO Sherar was identified by the investigation as the second officer present. He confirmed that he also exited the van. § 87(2)(b) confirmed PO Sherar's role as the second officer during a photo identification procedure.

**Undisputed Facts and Disputed Facts**

It is not is dispute that § 87(2)(b) was stopped and frisked on September 23, 2008. § 87(2)(g)

**Assessment of Evidence**

On September 23, 2008, § 87(2)(b) was stopped by PO Iglesias under the suspicion that § 87(2)(b) was engaging in a drug transaction. § 87(2)(b) claimed that he was just coming from the store and denied any wrong doing or interacting with any civilians as he was walking. PO Sherar and PO Iglesias claimed that they observed § 87(2)(b) talking to a black male on a bike. The officers stated that this unidentified male may have been a suspected drug dealer, § 87(2)(e), § 87(2)(f)

However, neither PO Sherar nor PO Iglesias could provide any documentation supporting this claim. Although both officers claimed that PO Sherar talked to the suspected drug dealer, there was no proof, as PO Sherar failed to prepare a stop and frisk report, failed to ask the male for his name, and failed to note the incident in his memo book. § 87(2)(b) alleged that PO Iglesias and PO Sherar asked if he had any weapons and drugs, frisked him, and searched his pants pockets. PO Iglesias did not recall conducting a frisk, but a frisk was noted on the stop and frisk report. The report indicated that PO Iglesias observed § 87(2)(b) for a minute and PO Iglesias indicated that it looked as if the civilians exchanged something. Although he did not see the civilians touching hands, it appeared so to PO Iglesias, although he could only see the alleged seller's back and part of § 87(2)(b)'s front

from a block and a half away. PO Iglesias denied searching § 87(2)(b) and PO Sherar denied frisking or searching § 87(2)(b). Ultimately, the officers did not find any proof that § 87(2)(b) committed an illegal act and released him.

**Allegation A: Abuse of Authority - PO Miguel Iglesias questioned § 87(2)(b)**

§ 87(2)(b) alleged that PO Iglesias approached him and questioned him for no reason. PO Iglesias alleged that he approached and questioned § 87(2)(b) because he observed him talking to a suspected drug dealer. § 87(2)(g)

**Allegation B: Abuse of Authority - PO Miguel Iglesias frisked § 87(2)(b)**

§ 87(2)(b) alleged that PO Iglesias frisked him. PO Iglesias could not recall the details, but according to the stop and frisk report a frisk was conducted based on § 87(2)(b)'s refusal to comply with the officers' direction and furtive movements. During his statement PO Iglesias claimed that his level of suspicion rose because § 87(2)(b) denied interacting with the unidentified male, because § 87(2)(b) seemed nervous, and because when asked where he lived, § 87(2)(b) responded that he lived in the area. § 87(2)(g)

**Allegation C: Abuse of Authority - PO Erik Sherar frisked § 87(2)(b)**

§ 87(2)(b) alleged that PO Sherar frisked him. PO Sherar denied these allegations and PO Iglesias did not recall if any other officer interacted with § 87(2)(b). § 87(2)(g)

**Allegation D: Abuse of Authority - PO Miguel Iglesias searched § 87(2)(b)**

§ 87(2)(b) alleged that PO Iglesias searched his pocket. PO Iglesias denied this allegation. According to the stop and frisk report, PO Iglesias observed a bulge on § 87(2)(b) that remained unknown. § 87(2)(g)

§ 87(2)(b) PO Sherar did not recall if a frisk or a search was conducted by PO Iglesias. However, it is a fact that PO Iglesias observed the bulge that § 87(2)(b)'s cell phone formed and noted this in the stop and frisk report. § 87(2)(g)

**Allegation E: Abuse of Authority - PO Erik Sherar searched § 87(2)(b)**

§ 87(2)(b) alleged that PO Sherar searched him. PO Sherar denied these allegations and PO Iglesias did not recall if any other officer interacted with § 87(2)(b). § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]

Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

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Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

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Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

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